

**REMARKS**

This Amendment and Request for Reconsideration is submitted in response to an outstanding Office Action dated November 28, 2003, the shortened statutory period for response set to expire on February 28, 2004. Applicants submit that the response is timely. In the event that the Commissioner determines that an extension of time is required, the undersigned hereby petitions for such required extension of time and authorizes the Commissioner to charge the Milbank deposit account (13-3250) for any required fee.

I. Status of the Claims

Please amend claims 1, and 23, and add new claims 28 and 29 as indicated above. Claims 1-23 and 28-29 are now pending in the application. Claims 24-27 were previously withdrawn. Claims 1, 23 and 28 are independent claims. New claim 28 corresponds generally to claim 19 and new claim 29 corresponds generally to claim 20.

Applicants acknowledge the Examiner's citation of statutory authority as a basis for claim rejections.

II. Rejections under 35 U.S.C. § 101

The Examiner has rejected claims 1-23 under 35 U.S.C. § 101 as "lack[ing] patentable utility. [The claims] only claim the manipulation of data but perform no concrete, useful or tangible result." The Examiner states that current office policy considers the claimed subject matter as non-statutory for failing to fall within the technological arts.

Applicants respectfully submit that as originally drafted independent claims 1 and 23 describe methods used to determine a company's probability of no default, and that a probability of no default has clear utility (i.e., it is useful). For example, a company's probability of no default is suited to support investment decisions and is useful in making those investment decisions. Dependent claims 16-18 claim specific examples of such uses. Applicants submit

that the Examiner relies on “current office policy” and has not cited any controlling authority or precedent for the rejection under § 101 and that the rejection is therefore improper and should be withdrawn. However, in the interest of advancing this application to allowance, independent claims 1 and 23 are amended herewith to include display of the company’s probability of no default, which is not only a useful result, but also a concrete and tangible result. Support for display is provided by video display terminals at page 8, line 15. This amendment is expressly made without prejudice or disclaimer to any later prosecution of claims without such an amendment.

Applicants respectfully ask for withdrawal of the rejection of claims 1-23 under § 101.

III. Rejections under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over Irving (USP 5,991,743) in view of Kealhofer (USP 6,078,903). The Examiner states that Irving discloses the claimed invention but is silent as to the default rating being in the form of a probability of default. The Examiner states that Kealhofer discloses that it is known to provide a probability of default, and it would have been obvious to provide the method of Irving with the probability format of Kealhofer to provide the rating in a numeric probability format.

With regard to independent claim 1 and the claims that depend therefrom, Applicants respectfully traverse the rejection under § 103.

Claim 1 recites: determining a factor reflecting price volatility of shares in the company; determining a factor reflecting price of the shares in the company; determining a factor reflecting debt per share of the shares in the company; determining a factor reflecting expected debt recovery fraction; determining a factor reflecting deviation of the expected debt recovery fraction; and determining and displaying the company's probability of no default using at least

the factor reflecting price volatility of shares in the company, the factor reflecting price of the shares in the company, the factor reflecting debt per share of the shares in the company, the factor reflecting expected debt recovery fraction and the factor reflecting deviation of the expected debt recovery fraction.

It should first be noted that although the Examiner states that Irving discloses the claimed method “but is silent regarding the default rating being in the form of a probability of default,” the Examiner has not provided any reference to specific location in Irving as support, making it difficult to respond to the rejection.

The Examiner states that Irving discloses “determining a factor reflecting both price and price volatility of shares in the company (system tracks share price over time).”

Applicants have been unable to locate any disclosure or teaching in Irving that tracks share price over time and uses that information to determine a default rating as recited by the Examiner, or to determine a company’s probability of no default as claimed.

Irving makes only a reference to stock price of the client. (col. 2, line 56). However, that reference is not in the context of determining a default rating or a company’s probability of no default. Rather, when that paragraph (col. 2 lines 33-65) is read in context, it is clear that the stock price is “other information [that] can be ascertained.” This occurs after risk related information is collected, processed and organized. (col. 2, lines 40-41). Thus, Irving does not disclose determining a factor reflecting price of shares in a company and using the price to determine a probability of no default.

Applicants have been unable to locate any disclosure or teaching in Irving of price volatility of shares of a company or use of price volatility of shares to determine a default rating or a company’s probability of no default.

The Examiner also states that Irving discloses “expected debt recovery fraction and deviation of the expected debt recovery (system tracks historic risk ratings including predetermined risk categories).” Applicants have reviewed Irving with respect to the disclosure of risk factors and risk categories. (col. 1, lines 45-50 and col. 3, lines 28-33 respectively). These risk factors and categories are described as including credit history, financial health of the client, the current economic conditions of the client’s industry, and the current economic conditions of the geographic regions that the client does business in. According to Irving, for these risk factors, risk related information are obtained and processed. (col. 1, lines 50-52). In that description, there is no disclosure or teaching of determining a debt recovery fraction or determining a deviation of debt recovery fraction. Similarly, there is no disclosure of using a debt recovery fraction or deviation of debt recovery fraction to determine a default rating as recited by the Examiner, or to determine a company’s probability of no default as claimed.

With respect to claim 19, the claim includes the elements of claim 1, which have been discussed above, and further recites determining a factor reflecting current price of the shares in the company, and determining the company’s probability of no default using that factor. The Examiner has not identified any particular disclosure in either of the cited references of determining a factor reflecting current price of the shares in the company, and determining the company’s probability of no default also using that factor. Applicants have been unable to locate any such disclosure or teaching.

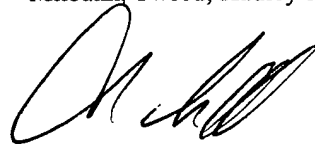
With respect to claim 20, the claim includes the elements of claims 1 and 19 and further recites using equations in substantially the forms as provided. The Examiner has not identified any particular disclosure in either of the cited references of using equations in substantially the forms as provided in the claim. Applicants have been unable to locate any such disclosure or teaching.

At least for these reasons, applicants ask the Examiner to withdraw the rejection under § 103 of claims 1-20 over Irving and Kealhofer.

IV. Request for Reconsideration

Applicants respectfully submit that the claims of this application are in condition for allowance. Accordingly, reconsideration of the rejection and allowance is requested. If a conference would assist in placing this application in better condition for allowance, the undersigned would appreciate a telephone call at the number indicated.

Respectfully submitted,  
Milbank, Tweed, Hadley & McCloy LLP



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